



CITY COUNCIL

Public Safety Committee

Monday, March 3, 2008

**Agenda
5:30 p.m.**

Committee Members: M. Goodman-Hinnershitz, D. Sterner, S. Marmarou

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| I. | Executive Session - Litigation | 5:00 p.m. |
| II. | Parking Authority – Funeral Parking | 6:00 p.m. |
| III | Disruptive Tenant Ordinance
Review amendment prepared by City Solicitor
Review Kutztown Ordinance | 6:30 p.m. |
| IV. | Update on Implementation of Housing Permit Ordinance | 7:00 p.m. |
| V. | Review Party Permit Ordinance | 7:15 p.m. |
| VI. | Review Departmental Reports
Codes Enforcement Report
Police Report
Fire Report | 7:45 p.m. |

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

§15-420. Daily Parking Permits.

1. **Purpose.** The daily parking permit is designed to make legal parking more convenient by having the motorist prepay the parking meter fee in return for a permit (sign). These signs are intended for short-term use only; they are not to be used in place of long term off-street parking. Daily parking permits are good at all metered and non-metered legal parking spaces. They do not permit parking in prohibited parking zones.

2. The following regulations govern the rental of the parking permit:

A. The Reading Parking Authority may require a separate Police Department issued "special event" permit for issuance of four or more signs.

B. The daily parking permit shall contain the name of the individual or organization renting the sign and the date, time and location of use.

C. Signs used in parking meter areas must be posted prior to 5 p.m. on the night before its intended use and posted one sign per metered space. The permit must be attached to the meter pole with string or wire. The use of tape is not permitted.

D. Signs used in non-metered areas must be posted 12 to 16 hours prior to the time indicated on the signs. One sign is required for every parking space.

E. Daily parking permits are exempt from street cleaning.

F. Daily parking permits cannot be used at loading zones or pick-up zones.

G. It is illegal to alter this sign or attempt to use it at a date and/or time other than originally specified.

H. After the sign has served its need and is no longer valid, the rentee is responsible for its prompt removal and proper disposal.

I. Should this sign become damaged or worn out before you are finished with it bring it to the Reading Parking Authority for a replacement.

J. No refunds or replacement signs will be issued by the Reading Parking Authority due to rescheduling of events, inclement weather or non use by the rentee.

K. Any violation of any of the above regulations may result in prosecution.

2. The cost of the daily parking permit shall be as follows:

A. Three dollars per space, per day for a non-metered space.

B. Five dollars per space, per day for a metered space.

(*Ord. 14-2001, 5/29/2001; as added by Ord. 77-2005, 11/14/2005, §1*)

§11-124 DISRUPTIVE CONDUCT

A. INVESTIGATION AND REPORT OF DISRUPTIVE CONDUCT

Police officers or public officers shall investigate alleged incidents of disruptive conduct. They shall complete a disruptive conduct report upon a finding that the reported incident constitutes disruptive conduct as defined herein. The information filed in said report shall include, if possible, the identity of the alleged perpetrators of the disruptive conduct and all other obtainable information, including the factual basis for the disruptive conduct described on the prescribed form. A copy of the disruptive conduct report shall be given or mailed to the occupant and mailed to the owner and local responsible agent within ten (10) working days of the occurrence of the alleged disruptive conduct.

B. APPEALS

The occupant, owner or local responsible agent shall have ten (10) working days from the date of receipt of a disruptive conduct report to appeal the contents of said disruptive conduct report. The appeal shall be made in writing and submitted to the Manager of the Codes Enforcement Division. An appeal of the third disruptive conduct report within a 12-month period shall stop the eviction proceedings against the occupants until the appeal is resolved, only if the eviction proceedings were a direct result of the third disruptive conduct report.

C. EVICTION

After three (3) disruptive conduct incidents in any 12-month period by an occupant documented by disruptive conduct reports, the owner or local responsible agent shall have ten (10) working days from the date of his/her receiving the notice to begin eviction proceedings against the occupants. This paragraph is not intended to limit or inhibit the owner or local responsible agent's right to initiate eviction actions prior to the third disruptive conduct incident.

D. SUSPENSION OR REVOCATION OF RENTAL PERMIT

Failure of an owner or local responsible agent to take action required in subsection C above will result in the commencement of the process to suspend a Rental Permit per the process established herein, notwithstanding any other requirements therefor.

E. REINSTATEMENT OF RENTAL PERMIT

The rental unit involved shall not have its Rental Permit reinstated until the reinstatement fee is paid and the disruptive occupants have been evicted, the Housing Board of Appeals has ruled in the occupant's favor, the Housing Board of Appeals has ruled in the owner's favor but has not ordered the eviction of the occupant(s), or the occupants have filed an appeal to a higher court thereby preventing their eviction. Notwithstanding this subsection, if there are points assessed against the owner per the provisions of this Ordinance which require suspension or revocation, a Rental Permit shall not be reinstated until compliance with the requirements therefor have occurred.

F. REOCCUPATION

The disruptive occupants, upon eviction, shall not re-occupy any rental unit on the same premises involved for a period of at least one (1) year from date of eviction.

G. REPORT AGAINST ALL OCCUPANTS

The content of the disruptive conduct report shall count against all occupants of the rental unit. The content of the disruptive conduct report shall not count against all occupants of the rental unit if the complaint is initiated by one of the rental unit occupants.

H. MAINTENANCE OF LIST OF EVICTED OCCUPANTS

The Codes Enforcement Office shall maintain a list of the names of all occupants evicted as a result of the preceding paragraph. The names shall remain on the list for a period of five (5) years.

I. APPEALS

Any person aggrieved by any decision of a police officer or public officer in regard to a disruptive conduct report or the revocation of a rental permit resulting therefrom may appeal to the Housing Board of Appeals. Such appeal must be filed with the appropriate fee with the Manager of the Codes Enforcement Division in writing, within ten (10) working days from the date of receipt of the Disruptive Conduct Report or notice of revocation.

§11-125 HOUSING BOARD OF APPEALS

A. APPEALS

Any person aggrieved by any decision of a police officer or public officer in regard to a disruptive conduct report or the suspension, nonrenewal, denial or revocation of a Rental Permit, may appeal to the Housing Board of Appeals. Such appeal must be filed, in writing, with the appropriate filing fee within ten (10) working days from the date of receipt of the disruptive conduct report or notice of revocation.

B. ORGANIZATION

1. MEMBERSHIP

The Disruptive Conduct Board of Appeals shall be a body of seven (7) members consisting of: the Managing Director or his/her designee who shall serve as Chairperson; a Councilperson, Codes Enforcement Division Manager or their designee; the Chief of Police or his/her designee; an owner or local responsible agent of a rental unit(s) in Reading; an occupant of a rental unit residing in the City of Reading; and a member of a community group recognized by the City of Reading.

2. ALTERNATES

There shall be three alternate members: an owner or local responsible agent, an occupant of a rental unit residing in the City of Reading and a member of a community group recognized by the City of Reading.

3. APPOINTMENT

All members of the Board shall be appointed by the Mayor with the advice and consent of the Council of the City of Reading, with the exception of the Council Member, who shall be appointed by the Council President.

4. TERM

A member or alternate member shall serve a term of not more than three (3) years from the time of appointment or reappointment or until his/her successor shall take office. Members and alternates of the initial board shall be appointed to staggered

terms of 1, 2 and 3 years.

5. POWERS OF DESIGNEE AND ALTERNATES

Designees and alternate members may be requested to attend meetings in absence of a regular member and shall have all the powers of a regular member at such meetings.

6. QUORUM AND MAJORITY VOTE

Four (4) members shall constitute a quorum of the Board. A majority vote of the members of the quorum of the Board shall prevail. A tie vote shall be deemed as a denial of the appeal.

C. POWERS

The Board shall have the following powers:

1. PROMULGATE RULES AND REGULATIONS

To adopt and administer the rules of procedure regarding its organization, officers (except the Chairperson), times and places of meetings, conduct of meetings and other legal procedures relating to the hearing and determination of appeals and other matters within the Board's jurisdiction.

2. HEAR AND DECIDE APPEALS

To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the police officer or public officer in the enforcement of the provisions of this Chapter.

3. GRANT MODIFICATION OR VARIANCE

To modify any notice of violation or order and to authorize a variance from the terms of this Code when because of special circumstances, undue hardship would result from literal enforcement, and where such variance substantially complies with the spirit and intent of the Code.

4. GRANT EXTENSION OF TIME

To grant a reasonable extension of time for the compliance, as described in the City's Property Maintenance Code and other applicable sections of the City of Reading Codified Ordinances of any order where there is a demonstrated case of hardship and evidence of bona fide intent to comply within a reasonable time period.

5. TIMELINESS

In exercising the above-mentioned powers, the Board shall act with reasonable promptness and seek to prevent unwarranted delays prejudicial to the party involved and to the public interest; provided, however, that the Board shall file its decision within ten (10) working days after the appeal hearing.

6. AUTHORITY

The Board may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as justice would require, and, to that end, shall have all the powers of the police officer or public officer; provided, however, that the Housing Board of Appeals, in its determination, shall be bound by this Chapter and shall not ignore the clear provisions and intent of this Chapter.

D. RECORDS OPEN TO INSPECTION

The disruptive conduct report and all records of all proceedings and the final disposition of the matter outlined in the appeal shall be public and available for inspection; provided, however, that the police officer or public officer may prescribe reasonable regulation regarding the time and manner of inspection.

E. AFFECT OF APPEALS

Any decision or order issued under, per and in accord with this Chapter shall be held in abeyance upon the timely filing of an appeal thereof with the Housing Board of Appeals or an appeal of a decision thereof to the Court of Common Pleas of Berks County. Said abeyance shall include but not be limited to revocation, suspension, denial or nonrenewal of a Rental Permit until the appeal is resolved. An appeal of the third disruptive conduct report within a twelve (12) month period

shall stop the eviction proceedings against the occupants until the appeal is resolved, only if the eviction proceedings were a direct result of the third disruptive conduct report.

F. ENFORCEMENT UPON RESOLUTION OF APPEAL OF HOUSING BOARD

If this appeal is of a third disruptive conduct report and the decision of the police officer or public officer has been affirmed, and no appeal is pending, within ten (10) working days after the expiration of the time for filing an appeal has expired and time for compliance as required by the decision of the Housing Board of Appeals or Court of Common Pleas, the public officer shall reinspect to determine compliance as to whether the occupant has voluntarily moved from the premises or the owner has initiated eviction proceedings.

If, when so required by a third disruptive conduct report, the occupant has not voluntarily moved or the owner has not initiated eviction proceedings, and there is no appeal pending, the time for filing an appeal and for compliance as required by the decision of the Board has expired, the public officer shall institute revocation of the rental permit per the provisions set forth in this Chapter.

G. FEE

The fee for filing of an Appeal to the Housing Board of Appeals shall be \$50. Failure to submit the appropriate fee with the request for an appeal shall result in automatic denial of the appeal.

§11-126 APPEAL TO COURT OF COMMON PLEAS

Any person, including the police officer or public officer for the City, aggrieved by any decision of the respective Board, may appeal to the Court of Common Pleas of Berks County. Such appeal shall be made by a duly verified petition in accord with the Pennsylvania Rules of Civil Procedure and shall set forth the factual and legal basis upon which the decision of the Board is alleged to be illegal, in whole or in part. Such petition shall be filed with the Court of Common Pleas and a notice thereof served upon all parties to the appeal before the Housing Board of Appeals, including the Board and City of Reading, within thirty (30) days after service of the decision.

§11-127 SHARE INFORMATION

The City of Reading Codes Enforcement Division is authorized to share any and all information obtained under this Code with other Departments and Divisions of the City of Reading.

§11-128 COMPLIANCE WITH OTHER CITY OF READING ORDINANCES

Every owner of every dwelling, in addition to the provisions set forth herein, shall comply with the provisions (sections) of all other applicable City Ordinances, including but not limited to the International / City of Reading Building Code, Existing Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code, and Residential Code, Property Maintenance Code, Solid Waste and Recycling Ordinance, Health Code and Zoning Ordinance.

ADDENDUM TO RENTAL AGREEMENT

This Addendum to Rental Agreement is made this day of _____, 20____ and is incorporated into and shall be deemed to amend and supplement the Rental Agreement made by the undersigned Tenant and Landlord, their heirs, successors and assigns, dated _____. The Rental Agreement and this Addendum pertain to the premises described in said agreement and located at _____. This Addendum is required by the Certification of Rental Units Ordinance of the City of Reading.

ADDITIONAL COVENANTS AND OBLIGATIONS

In addition to the covenants and obligations set forth in the aforementioned Rental Agreement, Tenant and Landlord hereby covenant and agree as follows:

A. Landlord's Covenants and Obligations:

1. Landlord shall keep and maintain the leased premises in compliance with all applicable Codes and Ordinances of the City of Reading and all applicable state laws and shall keep the leased premises in good and safe condition.

2. The local responsible agent for the leased premises shall be as follows:

Name

Address

Telephone Number

3. The Landlord shall be responsible for regularly performing all routine maintenance, including lawn mowing and ice and snow removal, and for making any and all necessary repairs in and around the leased premises, except for any specific tasks which the parties hereby agree shall be delegated to the Tenant and which are identified as follows:

4. The Landlord shall promptly respond to reasonable complaints and inquiries from the Tenant.

5. The Landlord shall comply with all applicable provisions of the Landlord/Tenant Act of the Commonwealth of Pennsylvania.

B. Tenant's Covenants and Obligations:

1. Tenant shall comply with all applicable Codes and Ordinances of the City of Reading and all applicable state laws.

2. Tenant agrees that the maximum number of persons permitted within the regulated rental unit at any time shall be five and the maximum number of persons permitted within the common areas of the leased premises at any time shall be five.

3. Tenant shall dispose of all rubbish, garbage and other waste from the leased premises in a clean and safe manner and shall separate and place for collection all recyclable materials in compliance with the City of Reading's Solid Waste and Recycling Ordinances.

4. Tenant shall not engage in any conduct on the leased premises which is declared illegal under the Pennsylvania Crimes Code or Liquor Code, or the Controlled Substance, Drug, Device and Cosmetic Act, nor shall Tenant permit others on the premises to engage in such conduct.

5. Tenant shall use and occupy the leased premises so as not to disturb the peaceful enjoyment of adjacent or nearby premises by others.

6. Tenant shall not cause, nor permit nor tolerate to be caused, damage to the leased premises, except for ordinary wear and tear.

7. Tenant shall not engage in, nor tolerate nor permit others on the leased premises to engage in "disruptive conduct" which is defined as "any form of conduct, action, incident or behavior perpetrated, caused or permitted by any occupant or visitor of a rental unit that is so loud, untimely (as to hour of the day), offensive, riotous or that otherwise disturbs other persons of reasonable sensibility in their peaceful enjoyment of their premises or causes damage to said premises, such that a report is made to a Police Officer and/or a Public Officer complaining of such conduct, action, incident, or behavior. It is not necessary that such conduct, action, incident or behavior constitute a criminal offense, nor that criminal charges be filed against any person in order for said person to have perpetrated, caused or permitted the commission of disruptive conduct as defined herein. Provided, however, that no disruptive conduct shall be deemed to have occurred unless a Public Officer or a Police Officer shall investigate and make a determination that such did occur, and keep written records, including a Disruptive Conduct Report of such occurrence. The tenant and the owner, operator, responsible agent or manager shall be notified of any such occurrences in writing."

8. Tenant acknowledges and agrees that this tenancy is subject to the provisions of the Codified Ordinances of the City of Reading including but not limited to the Housing Ordinance/ Code, the Health Code, the Property Maintenance Code and the Solid Waste and Recycling Ordinances, and that the issuance by a Public Officer or Police Officer of the City of Reading of three disruptive conduct reports in any 12-month period relating to the leased premises shall constitute a breach of the rental agreement of which this addendum is a part. Upon such breach, Landlord shall have the right and option to pursue any and all of the following remedies:

- a. Termination of the rental agreement without prior notice; and
- b. Bring an action to recover possession of the leased premises without abatement of rents paid, including reasonable attorney's fees and costs; and
- c. Bring an action to recover the whole balance of the rent and charges due for the unexpired lease term, including reasonable attorney's fees and costs; and

d. Bring an action for damages caused by Tenant's breach, including reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

WITNESS

TENANT

WITNESS

TENANT

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TENANT

SECTION 2. The Disruptive Conduct Board of Appeals shall be renamed to the Housing Board of Appeals. The current members of the Disruptive Conduct Board of Appeals shall remain in place and their terms shall be calculated commencing on the initial date of their appointment to the prior Disruptive Conduct Board of Appeals

SECTION 3. All other provisions of the City of Reading Codified Ordinances non inconsistent herewith shall remain in full force and effect. All other provisions of the City of Reading Codified Ordinances inconsistent herewith are repealed as of the effective date of this Ordinance.

SECTION 4. If any section, subsection, sentence or clause of this ordinance is held, for any reason, to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

KUTZTOWN BOROUGH CODE

Chapter 135: HOUSING STANDARDS

[HISTORY: Adopted by the Borough Council of the Borough of Kutztown 5-23-2005 by Ord. No. 15-2005. *Editor's Note: This ordinance also repealed former Ch. 135, Housing Standards, adopted 9-28-2004 by Ord. No. 20-2004. Amendments noted where applicable.*]

GENERAL REFERENCES

Housing License Appeals Board — See Ch. 12, Art. II.
Construction Code — See Ch. 75.
Building construction — See Ch. 77.
Electrical standards — See Ch. 107.
Property maintenance — See Ch. 136.
Plumbing — See Ch. 163.

§ 135-1. Purpose; history; short title; authority.

- A. Purpose. It is the purpose of this chapter and the policy of the Borough of Kutztown, in order to protect the public health, safety and welfare of the citizens of the Borough of Kutztown, to establish standards governing the rights and obligations of owner and occupants relating to the letting of certain dwelling units in the Borough of Kutztown. It is also the policy of the Borough of Kutztown that owner and occupants share responsibility for obeying applicable laws adopted to protect and promote public health, safety and welfare, including, but not limited to, fire prevention and property maintenance codes. As a means to those ends, this chapter provides for a system of inspections and issuance and renewal of housing licenses, and sets penalties for violations. A substantial portion of the dwellings in the Borough of Kutztown are rental units and a large portion of the dwellings which are not owner-occupied are let to students attending Kutztown University. This chapter shall be liberally construed and applied to promote its purposes and policies.
- B. History. This chapter is an amendment and partial reenactment of the previous Chapter 135, entitled "Housing Standards," of the Code of the Borough of Kutztown, which codified the enactment originally adopted as ordinance No. 15-1969 on November 11, 1969, as amended in its entirety by Ordinance No. 7-1988, and by subsequent amendments.
- C. Short title. This chapter shall be cited as the "Housing Standards" of the Borough of Kutztown.
- D. Authority. This chapter is enacted in accordance with the authority contained in the laws of the Commonwealth of Pennsylvania, including, but not limited to, Borough Code Sections 1202(6), 1202(21), 1202 (24) and 1202(74).
Editor's Note: See 53 P.S. § 46202, Subsections (6), (21), (24) and (74).

§ 135-2. Definitions and word usage.

- A. The following definitions shall apply in the interpretation and enforcement of this chapter:

AGENT — A person representing and acting on behalf of an owner.

APARTMENT — A dwelling unit occupied by one family and containing at least one bathroom and separate eating and cooking facilities with bath.

BOARDINGHOUSE — A one-family dwelling occupied by the owner thereof (and his family, if applicable), portions of which building the owner lets rooms for lodging.

CLOSED **DCR** — A closed **DCR** shall be a **DCR** as to which the owner or agent:

- (1) With respect to a Level 1 **DCR**, responds by complying with the procedures set forth in § 135-6E(3) of this chapter within 10 business days of receipt of a written notice of a Level 1 **DCR**.
- (2) With respect to a Level 2 **DCR**, responds by complying with the procedures set forth in § 135-6E(4) of this chapter within 20 business days of receipt of a written notice of a Level 2 **DCR**, and the Code Enforcement Officer has made a determination that the remedial plan proposed by the owner or agent pursuant to § 135-6E(4) has been performed by the owner or agent in all material respects. The owner or agent may request the Code Enforcement Officer to make such determination at the time of approval of the remedial plan or at any time thereafter. An owner or agent shall not be deemed to have failed to substantially perform a remedial plan as a result of the refusal of any judicial authority to order the eviction of any occupant, so long as the owner or agent has diligently pursued any eviction proposed in the owner or agent's remedial plan by

appropriate legal proceedings to the Court of Common Pleas.

CODE ENFORCEMENT OFFICER — Any person specifically designated as such by the Council of the Borough of Kutztown to enforce this chapter, and shall include the duly authorized representatives of said Code Enforcement Officer.

COMMON AREA — Any open area within a structure shared by occupants or that the occupants have the right to share, including, but not limited to, kitchens, bathrooms, living rooms, dining rooms, attics, basements and any room used for parties, social events or the congregation of people, excepting bedrooms.

DISRUPTIVE CONDUCT — Any form of conduct, action, incident or behavior perpetrated, caused or permitted by any occupant or visitor of a regulated unit that is so loud, untimely (as to hour of the day), offensive, riotous or that otherwise disturbs other persons of reasonable sensibility in their peaceful enjoyment of their premises such that a report is made to police and/or to the Code Enforcement Officer complaining of such conduct, action, incident or behavior. It is not necessary that such conduct, action, incident or behavior constitutes a criminal offense, nor that criminal charges be filed against any person in order for a person to have perpetrated, caused or permitted the commission of disruptive conduct, as defined herein; provided, however, that no disruptive conduct shall be deemed to have occurred unless the Code Enforcement Officer or police shall investigate and make a determination that such did occur, and keep written records, including a disruptive conduct report, of such occurrence.

DISRUPTIVE CONDUCT REPORT OR DCR — A Level 1 DCR and/or a Level 2 DCR, as the context may require.

DISRUPTIVE CONDUCT REPORT LEVEL 1 OR LEVEL 1 DCR — A written report of disruptive conduct on a form to be prescribed therefor, in accordance with § 135-5 of this chapter, to be completed by the Code Enforcement Officer or police officer, as the case may be, who actually investigates an alleged incident of disruptive conduct and which shall be maintained by the Code Enforcement Officer. Disruptive conduct reports shall be separate from any other action taken by the police and shall be considered public documents. A DCR shall be deemed a Level 1 DCR when no criminal citation or prosecution is issued in response to the disruptive conduct and other legal action in the judicial system is not pursued by the Borough Police Department or Code Enforcement Officer.

DISRUPTIVE CONDUCT REPORT LEVEL 2 OR LEVEL 2 DCR — A written report of disruptive conduct on a form to be prescribed therefor, in accordance with § 135-5 of this chapter, to be completed by the police officer who actually investigates an alleged incident of disruptive conduct and which shall be maintained by the Code Enforcement Officer. A DCR shall be deemed a Level 2 DCR when the disruptive conduct results in the issuance of an actual criminal citation, a criminal offense is actually charged or other legal action is pursued in the judicial system by the police or Code Enforcement Officer. A Level 2 DCR may also be issued by the Code Enforcement Officer as provided in §§ 135-7C and 135-6E(3) of this chapter. Level 2 DCR's shall be those DCR's in which owner and occupants shall accrue penalties, if applicable, under this chapter.

DWELLING — Any building or structure (except temporary housing) which is wholly or partly used or intended to be used for living or sleeping by human occupants.

DWELLING UNIT — Any group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living or sleeping.

FAMILY — As used in this chapter, the term "family" shall be defined as:

- (1) One or more persons related by blood, marriage, adoption or other decree of legal custody living together as a single housekeeping unit and using cooking facilities and certain rooms in common;
- (2) Not more than three persons unrelated, as set forth in Subsection (1) above, living together as a single housekeeping unit and using cooking facilities and certain rooms in common; provided, however, that no related dependent of such unrelated persons shall be counted in determining the number of unrelated persons living together; or
- (3) More than three unrelated handicapped persons living permanently together as a single housekeeping unit and using cooking facilities and certain rooms in common; provided, however, that such persons shall be under the supervision of a nonhandicapped resident of the dwelling and provided, further, that the dwelling is owned and operated by a Pennsylvania nonprofit corporation.

FORMAL WARNING — The warning described in § 135-10C(1) of this chapter.

GUEST — A person on the premises with actual or implied consent of an occupant, who is not an occupant.

HOUSING LICENSE — The license issued to the owner or agent of regulated units under this chapter, which is required for the lawful letting and occupancy of regulated units.

HOUSING LICENSE APPEALS BOARD — The Housing License Appeals Board established pursuant to Article II of Chapter 12 of the Code of the Borough of Kutztown.

LET, LETTING, LEASE, RENT, RENTING, RENTAL OR WORDS OF SIMILAR MEANING — The act of permitting a unit to be used to provide a living arrangement for one or more persons not the owner thereof or the owner's family, whether or not for compensation.

LICENSE YEAR — As used in this chapter, the term "license year" shall mean August 1 of any year through July 31 of the succeeding year.

MULTIPLE DWELLING — Any dwelling containing two or more dwelling units.

NONRENEWAL — The nonrenewal described in § 135-10C(2) of this chapter.

OCCUPANT — Any person over one year of age living, sleeping, cooking or eating in a unit.

OPEN DCR — A DCR which has been issued and has not become a closed DCR.

OWNER — Any person who, individually, jointly or severally with others, shall have legal or equitable title to or have any other legal or beneficial interest in any unit, whether or not such person occupies the unit or any part thereof.

PERFORMANCE CODES — All codes of the Borough of Kutztown, and specifically: Chapter 136 of the Code of the Borough of Kutztown, entitled "Property Maintenance," adopting the International Property Maintenance Code of 2003, as such chapter is amended from time to time; Chapter 225 of the Code of the Borough of Kutztown, entitled "Zoning," as such chapter is amended from time to time; Chapter 185 of the Code of the Borough of Kutztown, entitled "Solid Waste," and Chapter 119 of the Code of the Borough of Kutztown, entitled "Fire Prevention," as such chapters are amended from time to time.

PERSON — Includes any individual, firm, corporation, company, association, partnership, trust, agent or other entity. When referring to occupancy or maximum dwelling unit occupancy pursuant to this chapter, person shall refer only to an individual.

POLICE — The Police Department of the Borough of Kutztown, established pursuant to Chapter 38 of the Code of the Borough of Kutztown, or any properly authorized member or officer thereof or any other law enforcement agency having jurisdiction within the Borough of Kutztown.

PREMISES — Any lot, tract or parcel of real property in the Borough of Kutztown, including the land and all buildings and appurtenant structures or appurtenant elements, on which one or more regulated units are located.

REASONABLE NOTICE — In the case of nonemergency notice, five business days' advance notice by United States first class mail. Reasonable notice in emergency situations shall be determined in accordance with § 135-9C of this chapter.

REGULATED UNIT — Any unit subject to regulation under this chapter.

REMEDIAL PLAN — The plan required to be filed by the owner or agent pursuant to § 135-6E(4) of this chapter.

RENTED ROOM — A room which is let and which is occupied by persons who share certain facilities in common with the owner and/or with other occupants of the dwelling, boardinghouse, rooming house or multiple dwelling in which the let housing is located.

RESPONSIBLE PARTY — Any parent of, legal guardian of or other adult legally responsible for any minor individual (under 18 years of age) who would be considered an occupant for purposes of this chapter. All minor occupants shall provide the name of the responsible party to the owner or agent of the regulated unit at the time of the entry into a particular lease or rental agreement, and the owner or agent shall provide this information to the Borough.

REVOCATION — The revocation described in § 135-10C(4) of this chapter.

ROOMING HOUSE — A building, other than a fraternity house, sorority house, hotel or a motel, in which building the owner provides rooms for lodging of individuals.

ROOMING UNIT — Any room or group of rooms located within a rooming house forming a single habitable unit used or intended to be used for living or sleeping purposes.

SUSPENSION — The suspension described in § 135-10C(3) of this chapter.

UNIT — Any apartment, rented room, rooming unit, boardinghouse, rooming house, multiple dwelling or other

dwelling unit or dwelling, or any room or portion thereof that is offered for let.

B. Word usage.

- (1) Whenever the words "dwelling," "dwelling unit," "multiple dwelling," "boardinghouse," "rented room," "rooming house," "rooming unit," "apartment," "regulated unit," "unit," and "premises" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof."
- (2) Tense, gender and number. Words used in the present tense include the future; words used in the masculine gender include the feminine and the neuter; the singular number includes the plural, and the plural the singular.

§ 135-3. Housing licenses.

A. Application.

- (1) No person shall operate or let to another for occupancy any unit, unless such person shall first apply for and obtain annually a housing license issued by the Code Enforcement Officer.
- (2) No housing license shall be issued or renewed unless such applicant designates in writing to the Code Enforcement Officer the name of said owner's agent for the receipt of service of notice of violation of the provisions of this chapter and for service of process pursuant to the provisions of this chapter and accurately and truthfully provides all of the information required by § 135-5 and Subsections A, B, C and D of § 135-6 of this chapter.
- (3) This chapter shall not apply to a unit which is let during any license year for one or more periods of time, provided no such period exceeds 10 continuous days.

B. Housing licenses shall be issued for the period of one license year. Upon expiration of any housing license, a new housing license shall be required for a further period of one license year.

C. The Borough Code Enforcement Officer shall allow owner or agents who are required to obtain housing licenses under this chapter to obtain such new housing licenses for 1/2 of the fee for the prescribed housing license when the application is received by the Borough Code Enforcement Officer on or after February 1 of any year. Housing licenses for less than the full license year will not be issued at the beginning of a license year. All housing licenses shall have as their termination date the 31st day of July next occurring.

D. Every housing license issued under this chapter shall be maintained in the regulated unit and shall be posted in a conspicuous location in the entryway of every licensed regulated unit in such a way so as to minimize tampering and removal and in such a way that it may be seen at all times.

E. For the purpose of determining the number of units or rooms and the maximum number of occupants of a regulated unit to be included in a housing license, the following shall apply:

- (1) Any apartment or room occupied as a dwelling unit by the owner of a boardinghouse shall be excluded from the total number of units or rooms.
- (2) All buildings which are owned by the same person and which are under the same roof or connected by breezeways, passageways or similar connecting facilities or which are constructed upon contiguous sites and operated and managed as one complex of units may be combined to determine the total number of units or rooms.

F. Each housing license issued shall set forth the maximum number of occupants permitted to occupy the regulated unit, determined by reference to and in accordance with the Performance Codes.

G. Housing licenses shall not be transferable in the event of a change in ownership of the regulated unit.

H. Housing permits or licenses previously issued and applications previously filed under the previous enactment of Chapter 135 of the Code of the Borough of Kutztown are not invalidated by the provisions of this chapter and shall be treated as if the same had been issued or filed under this chapter.

I. No housing license shall be issued until the regulated unit and the premises upon which the regulated unit is located have been inspected by the Code Enforcement Officer and the regulated unit and the proposed use thereof have been found to be in compliance with the Performance Codes; provided, however, that no inspection shall be required prior to the issuance of a housing license, the application for which is made by the owner of the regulated unit within 90 days after becoming the owner of the premises and so long as there is not outstanding in the records of the Code Enforcement Officer any unresolved violations or inspection requests pertaining to the regulated unit. If any deficiencies as set forth under Chapter 136 of the Code of the Borough of Kutztown, entitled

"Property Maintenance," are detected during inspection, no housing license shall be issued until all such deficiencies are corrected, as confirmed by subsequent inspections by the Code Enforcement Officer.

§ 135-4. Fees.

- A. The Borough Council of the Borough of Kutztown may, by resolution, adopt from time to time fees and charges applicable to this chapter, for inclusion as part of Chapter A231 of the Code of the Borough of Kutztown. Such fees and charges may include, but are not limited to, the following:
- (1) The amount of the annual fee for a license year to be paid at the time of filing of an application for a housing license pursuant to § 135-3 of this chapter.
 - (2) Any owner or agent who fails to renew an expired housing license within 10 days after the expiration date of the housing license shall, in addition to the fines provided for in § 135-10A and B of this chapter, be subject to a fee of \$25 for each and every additional ten-day period or part thereof during which the expired housing license is not renewed and the regulated unit continues to be used for purposes subject to regulation under this chapter.
 - (3) Fees to be imposed for failure to permit an inspection at a time agreed upon in advance by the owner or agent and the Code Enforcement Officer and confirmed in writing by the Code Enforcement Officer.
 - (4) Such other fees and charges as are deemed to be necessary or appropriate.
- B. No fee shall be required in connection with the issuance of a housing license in the following circumstances:
- (1) When the owner or agent is the United States government, the Commonwealth of Pennsylvania, the Borough of Kutztown or any agency thereof.
 - (2) When the owner or agent is a nonindividual person organized and operated exclusively for religious, charitable and/or educational purposes, and provided further, that no part of the net earnings or profits of any such nonindividual person shall inure to the benefit of any officer, director, shareholder, partner, trustee, beneficiary or principal thereof or to any other person, other than solely for charitable purposes.
- C. The housing license fee exemptions contained in Subsection B above shall, nevertheless, not exempt such owner or agents from compliance with this chapter and the Performance Codes and all other applicable rules and regulations issued in connection with it, unless specifically otherwise exempted herein.

§ 135-5. Adoption of rules and regulations.

The Code Enforcement Officer shall administer and enforce the provisions of this chapter and may propose rules, regulations and forms necessary for its administration. Such rules, regulations and forms shall not be in conflict with this chapter or any other chapters and shall be submitted to the Council of the Borough of Kutztown for approval by resolution. If the rules, regulations and forms so submitted to Council are approved by Council, the same shall be filed in the office of the Code Enforcement Officer of the Borough of Kutztown and in the office of the Secretary of the Borough of Kutztown. Such rules, regulations and forms as may be adopted shall then be deemed to be a part of this chapter and to have the same effect as this chapter. *Editor's Note: Said forms, as adopted by Res. No. 20-2005, are on file in the Borough offices.*

§ 135-6. Responsibilities of owner and agents.

- A. Whosoever, as owner or agent, lets or holds out to let any unit subject to the provisions of this chapter shall supply the Code Enforcement Officer with the following information:
- (1) The street address and mailing address (if different from the street address) of each such unit.
 - (2) The number of units for let in any dwelling, rooming house or boardinghouse, which number shall in no event exceed the number of such units provided for on the housing license issued to the owner or agent on behalf of the owner.
 - (3) The name of each person occupying each such unit.
 - (4) The period of time for which the unit is let.
- B. Such information shall be supplied to the Code Enforcement Officer annually in writing, in such form as may be prescribed in accordance with § 135-5 of this chapter. Such information pertaining to any unit shall also be supplied in writing to the Code Enforcement Officer, in such form as may be prescribed in accordance with § 135-

9 of this chapter, within 10 days after the occupancy of any such unit changes.

- C. The owner of any unit required to obtain a housing license pursuant to the requirements of this chapter shall designate a person to serve as the owner's agent. The owner or agent shall be legally responsible for operating each unit in compliance with all provisions of this chapter and the Performance Codes, the housing license issued relating to the maximum number of persons that may occupy such regulated unit and all other provisions of this chapter. The agent shall reside either within such premises where the regulated unit is located or within a five-mile radius thereof. The owner of the regulated unit may also serve as the agent if such owner resides within the premises where the regulated unit is located or within a five-mile radius of the territorial boundary of the Borough of Kutztown or if such owner resides more than five miles from the territorial boundary of the Borough of Kutztown but has a place of business within the Borough of Kutztown and is present at the place of business during normal business hours. For purposes of this section, "normal business hours" shall mean the period of time commencing at 9:00 a.m. and continuing through and including 5:00 p.m., prevailing time, Monday through Friday, except legal holidays, throughout the calendar year. In the absence of the owner, the agent shall be responsible for providing access to such regulated unit so as to permit the Code Enforcement Officer to make inspections thereof. The agent shall be an individual not less than 18 years of age. The name, address and phone numbers of the owner or agent shall be posted in a conspicuous place within the regulated unit.
- D. The owner of any regulated unit shall, within 10 days of becoming such owner and thereafter annually, furnish in writing the following information to the occupants and to the Code Enforcement Officer:
- (1) The name, home and business addresses and home and business phone numbers of each owner.
 - (2) The name, home and business addresses and home and business phone numbers of the agent.
- E. Regulation of occupant conduct and activities.
- (1) The owner or agent of any regulated unit shall be responsible for assuring that the conduct and activities of the occupants of every regulated unit which the owner or agent owns in the Borough of Kutztown, which conduct or activity takes place at such regulated unit or its premises, is in compliance with this chapter. In order to achieve those ends, every owner or agent of a regulated unit shall take appropriate contractual and enforcement action to cause the conduct and activities of the occupants thereof to comply with this chapter.
 - (2) Where an owner or agent does not manage the use of common areas of the premises and the behavior of occupants and guests in the common areas by appropriate contractual and enforcement action, the owner or agent shall be directly responsible for the behavior of occupants and guests in common areas of the premises as if the owner or agent were an occupant.
 - (3) Within 10 business days after the receipt of written notice from the Code Enforcement Officer that a Level 1 **DCR** has been issued as a result of an occupant of a regulated unit having violated a provision of this chapter, the owner or agent shall notify the occupants of the regulated unit of the issuance of the Level 1 **DCR** and its contents, utilizing a form letter provided with such written notice, such form letter to be in such form as is approved in accordance with § 135-5 of this chapter. A copy of such form letter issued by the owner or agent to the occupants shall be delivered to the Code Enforcement Officer within such 10 business day period. Failure by the owner or agent to comply with the foregoing provisions of this § 135-6E(3) shall constitute sufficient grounds for the issuance to the owner or agent by the Code Enforcement Officer of a Level 2 **DCR**.
 - (4) Remedial plan.
 - (a) Within 20 business days after the receipt of a written notice from the Code Enforcement Officer that a Level 2 **DCR** has been issued as a result of an occupant or owner or agent of a regulated unit having violated a provision of this chapter, the owner or agent shall file with the Code Enforcement Officer a remedial plan, on such form as is approved in accordance with § 135-5 of this chapter, which shall, at a minimum, state the following:
 - [1] Set forth what action the owner or agent has taken to remedy the violation;
 - [2] What steps the owner or agent has taken to prevent a reoccurrence of the violation; and
 - [3] Set forth specific steps the owner or agent will take in the future if the violation reoccurs.
 - (b) The Code Enforcement Officer shall review the report, and, if the Code Enforcement Officer determines that adequate steps have been taken or are proposed to be taken and the remedial plan is adequate to address future violations, the Code Enforcement Officer shall, within 10 business days after receipt of the remedial plan, approve the remedial plan or reject the remedial plan and issue written notice thereof to the owner or agent. The owner or agent shall, on his or her initiative, enforce the remedial plan. Failure to enforce the remedial plan diligently shall be a violation of this chapter. If

the Code Enforcement Officer determines that the remedial plan should not be approved and rejects the remedial plan, written notice thereof shall be issued to the owner or agent, and within 10 business days of receiving such notice the owner or agent shall refile a remedial plan which addresses the deficiencies found by the Code Enforcement Officer. The owner or agent may appeal the Code Enforcement Officer's rejection of the remedial plan to the Housing License Appeals Board.

- (5) This section shall not be construed as diminishing or relieving, in any way, the responsibility of the occupants, responsible parties and/or their guests for their conduct or activity, nor shall it be construed as an assignment, transfer or projection over or onto any owner or agent of any responsibility of the occupants, any responsible parties or their guests for their conduct or activity, nor shall it be construed as an assignment, transfer or projection over or onto any owner or agent of any responsibility or liability which occupants or their guests may have as a result of their conduct or activity under any private cause of action, civil or criminal enforcement proceeding or criminal law; nor shall this section be construed so as to require an owner or agent to indemnify or defend the occupants, any responsible party or their guests when any such action or proceeding is brought against the occupant based upon the occupant's conduct or activity, nor to, in and of itself, impose any liability for negligence based upon any act or omission of the owner or agent. Nothing herein is intended to impose any additional civil/criminal liability upon owner or agent other than that which is imposed by other laws or judicial decisions or that which is imposed by this chapter. This section is not intended to, nor shall its effect be, to limit any other enforcement remedies which may be available to the Borough of Kutztown against an owner or agent, occupant or guest thereof.

F. Agreements for regulated units. Regulated units shall only be let pursuant to an agreement or lease.

- (1) All rental agreements and/or leases for the Rental of regulated units shall be in writing and shall be supplemented with the addendum attached hereto as Appendix A. *Editor's Note: Appendix A is included at the end of this chapter.* No oral agreements or leases and no oral modifications of agreements or leases are permitted. All information required to be given to occupants and responsible parties by the owner or agent, pursuant to this chapter and/or the Pennsylvania Landlord and Tenant Act, *Editor's Note: See 68 P.S. § 250.101 et seq.* shall be furnished before the signing of the agreement or lease. The owner or agent shall provide the occupant and responsible party with copies of the rental agreement or lease and addendum upon execution. Appendix A shall not be submitted to the Borough of Kutztown unless requested pursuant to § 135-6(F)(4) hereinbelow.
- (2) The owner or agent and the occupant may include in a lease or rental agreement terms and conditions not prohibited by this chapter or other applicable ordinances, regulations and laws, including compensation, if applicable, term of the lease or rental agreement and other provisions governing the rights and obligations of the parties. Except as otherwise provided for in this chapter, no lease or rental agreement may provide that the occupant or owner agrees to waive or forego rights or remedies provided under this chapter. Any provision prohibited by this § 135-6F included in a lease or rental agreement shall be void and unenforceable.
- (3) Commencing with the effective date of this chapter, this chapter shall be available for purchase in the Borough Code Office and may be made available by other appropriate means, such as electronically at the Borough's website. Where a rental agreement or lease has been entered into prior to the effective date of this chapter, the owner or agent shall make the occupant aware of this chapter within 60 days thereafter.
- (4) The owner or agent shall secure a written acknowledgement from the occupant at the time of signing the rental agreement or lease that the occupant has received the information required by this chapter on a form approved in accordance with § 135-5 of this chapter and which shall contain an acknowledgement of receipt of the information by the occupant and any responsible party. Upon request by the Code Enforcement Officer, the owner or agent, within 10 business days of the request, shall furnish to the Code Enforcement Officer copies of said acknowledgement and/or copies of the rental agreement(s) or lease(s) the owner or agent has entered into for regulated units.

G. The owner or agent shall ensure that the regulated unit and the premises upon which the regulated unit is located comply at all times with the Performance Codes.

H. The owner or agent shall reply promptly to reasonable complaints and inquiries from occupants.

I. The owner or agent shall comply with all provisions of the Landlord and Tenant Act of the Commonwealth of Pennsylvania.

J. All notices served upon the owner or agent by the Code Enforcement Officer or the Housing License Appeals Board shall be conspicuously posted by the owner or agent within the unit to which the notice applies.

§ 135-7. Responsibilities of occupants; disruptive conduct.

- A. Peaceful enjoyment. The occupants of a regulated unit shall each conduct themselves and require other persons, including, but not limited to, guests on the premises and within the regulated unit with the occupant's consent and consistent with agreements and leases in effect, to conduct themselves in a manner that will not disturb the peaceful enjoyment of the premises by others, and that will not disturb the peaceful enjoyment of adjacent or nearby premises by the persons occupying the same.
- B. Illegal activities. The occupant shall not engage in, nor tolerate nor permit others on the premises to engage in, any conduct declared illegal under the Pennsylvania Crimes Code (18 Pa. C.S.A. § 101 et seq.) or Liquor Code (47 P.S. § 1-101 et seq.) or the Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. § 780-101 et seq.).
- C. Disruptive conduct. It shall be a violation of this chapter for any occupant or any other person to engage in disruptive conduct, as defined in this chapter, on the premises of a regulated unit. When police or the Code Enforcement Officer investigate an alleged incident of disruptive conduct occurring in or about a regulated unit, the investigating officer shall complete a disruptive conduct report upon a finding that the reported incident did, in his or her judgment, constitute disruptive conduct as defined in this chapter. Each disruptive conduct report shall be conspicuously marked by the investigating officer to indicate whether it is a Level 1 **DCR** or a Level 2 **DCR**. The information filled in on said report shall include, to the extent possible, the identity or identities of the alleged perpetrator(s) of the disruptive conduct and all other obtainable information, including the factual basis for the disruptive conduct, as requested on the prescribed form. Where the police make such investigation, said police officer shall then submit the completed disruptive conduct report to the Code Enforcement Officer. A Level 2 **DCR** may also be issued by the Code Enforcement Officer for the reasons set forth in § 135-6E(3) of this chapter. In all cases, the Code Enforcement Officer shall mail a copy of the disruptive conduct report to the owner or agent of the regulated unit in question within five business days of the occurrence of the alleged disruptive conduct, notwithstanding whether the person making the investigation on behalf of the Borough of Kutztown is the Code Enforcement Officer or the police. The Code Enforcement Officer may also mail a copy of the disruptive conduct report to other appropriate parties.
- D. In addition to all obligations imposed upon occupants by this chapter, occupants of regulated units shall comply with all other applicable codes and ordinances of the Borough of Kutztown and all other applicable laws of the Commonwealth of Pennsylvania and the United States of America.
- E. The occupant of a regulated unit shall comply with all lawful provisions of the rental agreement and/or lease entered into between owner or agent and occupant.
- F. The occupant of a regulated unit shall not intentionally cause, nor permit nor tolerate others to cause, damage to the premises. Conduct which results in damages to a property may be considered a violation of this chapter and the Performance Codes and may be subject to a disruptive conduct report.
- G. The occupant of a regulated unit shall permit inspections of the premises by the Code Enforcement Officer at reasonable times and upon reasonable notice.
- H. It shall be a violation of this chapter for any person to remove or deface any notice, placard or document required to be posted within a regulated unit, and it shall be unlawful for any person to occupy the regulated unit unless all notices, placards and documents are posted as required by this chapter.

§ 135-8. Inspections.

- A. The Code Enforcement Officer is authorized and directed to make inspections to determine the occupancy, use and/or compliance with the Code of the Borough of Kutztown of any unit, and the premises thereof, located within the Borough of Kutztown in order to safeguard the health and safety of the occupants thereof and the general public. The Code Enforcement Officer is further authorized to enter for the purposes of examining and surveying all areas of any such unit with reasonable notice and at reasonable times, which shall be deemed to be between 8:00 a.m. and 10:00 p.m. prevailing time. Every owner or agent or occupant of any such unit shall extend the Code Enforcement Officer access to such unit for the purpose of making any inspection, examination or survey thereof.
- B. In the event that permission to enter any such unit for the purpose of inspection is denied, the Code Enforcement Officer, upon showing of probable cause that a violation of this chapter, any other provision of the Code of the Borough of Kutztown, or any other ordinance of the Borough of Kutztown has occurred, or that any order, notice, rule or regulation issued or made in connection therewith has been violated, may apply to the appropriate authority for a search warrant to enter and inspect the premises.
- C. A warrant shall not be required when entry is by permission or at the request of the occupant.

§ 135-9. Enforcement; service of notices and orders; appeals.

- A. Whenever the Code Enforcement Officer believes, or has cause to believe, that there is a violation of the provisions of this chapter or any rule or regulation adopted pursuant to it, including by virtue of the issuance of a **DCR**, the Code Enforcement Officer shall give notice of the violation. Such notice shall:
- (1) Be in writing and shall state the place and manner of the violation, including the address of the specific regulated unit in question.
 - (2) State the nature or condition of the violation.
 - (3) State the determination of the investigating officer with respect to the violation, including a conspicuous statement that a **DCR** is either a Level 1 **DCR** or a Level 2 **DCR**.
 - (4) State the name of the person who he deems responsible therefor, together with name of the owner of the premises involved and any agent for the owner.
 - (5) State the date of the notice and the number of days allowed for compliance with it.
 - (6) Be served upon the owner or agent of the premises involved, any relevant responsible party appearing in the records of the Code Enforcement Officer, and all other persons, if any, named in the notice pursuant to Subsection A(4) of this section, and any notice served upon the owner or agent and such other person or persons, if any, personally or by certified or registered mail, return receipt requested, sent to the last known address of such owner or agent and such other person or persons, if any, and by posting the same in a conspicuous place in or about the premises affected by the notice, shall be deemed to have been properly served.
 - (7) The notice may, in addition, contain any other pertinent data, information or statements which the Code Enforcement Officer deems appropriate.
- B. Any person affected by a notice of violation, determination or order issued by the Code Enforcement Officer or affected by any rule or regulation adopted pursuant to this chapter (except the establishment of fees pursuant to § 135-4 of this chapter) may appeal said notice, determination, order, rule or regulation to the Housing License Appeals Board. The timing, form and substance of such appeal shall be in compliance with the requirements of Article II of Chapter 12 of the Code of the Borough of Kutztown. The filing of such appeal shall not serve as a supersedeas, except in the case of appeals of enforcement or disciplinary action pursuant to § 135-10C(3) and (4) of this chapter.
- C. Whenever the Code Enforcement Officer determines that an emergency condition exists as a result of a violation of this chapter which requires immediate action to protect public health and/or safety, he may issue an order declaring the existence of such emergency and requiring action to be taken to remedy such emergency. Such emergency order shall be effective immediately upon issuance. Any person to whom such order is directed shall comply therewith immediately. However, such person may file an appeal to the Housing License Appeals Board as hereinabove provided for in § 135-9B of this chapter, but such appeal shall not serve as a supersedeas to the Code Enforcement Officer's emergency order.
- D. Notwithstanding the requirements of § 135-9A of this chapter, if the Code Enforcement Officer determines or has reason to believe that a violation of this chapter exists concerning the health, safety, welfare or occupancy of the premises, he may proceed, without giving the notice provided for in § 135-9A of this chapter, to cause a citation to be issued to the owner or agent and, in the case of violations involving occupancy as more particularly set forth in § 135-6E of this chapter, to the agent of the unit which the Code Enforcement Officer determines or has information to reasonably believe is in violation of the provisions of this chapter or any rule or regulation adopted pursuant to it.
- E. The housing license required by this chapter, when issued to the owner or agent on behalf of the owner of a unit, shall constitute notice to such owner or agent of the maximum number of persons that may lawfully occupy the unit and the residential uses therefor.
- F. Any owner or agent who, upon receipt of a housing license, disputes the use and/or maximum occupancy listed thereon, may request in writing a meeting concerning such use and/or occupancy with the Code Enforcement Officer, such request to be filed within 10 business days after receipt of the housing license. If the dispute cannot be resolved in the aforesaid meeting with the Code Enforcement Officer, the owner or agent may appeal to the Housing License Appeals Board as provided for in Article II of Chapter 12 of the Code of the Borough of Kutztown, in which case such appeal period shall commence on the day of such meeting; provided, however, that any appeal of any aspect of a housing license which sets forth a determination pursuant to Chapter 225, entitled "Zoning," of the Code of the Borough of Kutztown, shall be appealed in the manner set forth in said Chapter 225.

§ 135-10. Violations and penalties.

- A. Any person who violates or fails to comply with any of the provisions of this chapter or any order, notice, rule or regulation issued or made in connection herewith shall, upon conviction thereof, pay a fine of not less than \$50 nor more than \$1,000 and, in default of the payment thereof, shall undergo imprisonment in the Berks County Prison for a period not exceeding 30 days.
- B. Every violation of this chapter shall constitute a separate offense, and each day such violation exists shall constitute a separate offense. In the event that any regulated unit is occupied by more than the maximum number of persons allowed by and listed on the housing license issued in accordance with § 135-3 of this chapter, then each day of occupancy by each such person in excess of such maximum number of occupants shall constitute a separate offense under this chapter. It shall be a violation of this chapter to let a unit subject to regulation under this chapter after nonrenewal, suspension and/or revocation of a housing license pursuant to § 135-10C through F of this chapter.
- C. Disciplinary actions. Subject to the procedure set forth in § 135-9A of this chapter, the Code Enforcement Officer may initiate the disciplinary actions set forth in this § 135-10C against an owner or agent with respect to a regulated unit for any of the reasons set forth in § 135-10D of this chapter:
- (1) Formal warning: the formal written notification of at least one violation of this chapter. Upon satisfactory compliance with this chapter and any conditions imposed by the Code Enforcement Officer and/or the Housing License Appeals Board, formal warnings shall be removed when the owner applies for housing license renewal when required by this chapter.
 - (2) Nonrenewal: the denial of the privilege to apply for housing license renewal for a regulated unit after expiration of the license term. The owner shall be permitted to maintain occupants in the regulated unit in question until the end of the current license term but the Code Enforcement Officer shall not accept applications for renewal of the housing license until the expiration of the time set by the Housing License Appeals Board.
 - (3) Suspension: the immediate loss of the privilege to let the regulated unit for a period of time set by the Code Enforcement Officer or the Housing License Appeals Board. The Code Enforcement Officer may suspend only until the matter can be scheduled for the next possible Housing License Appeals Board meeting, at which meeting the Housing License Appeals Board shall consider the propriety of the suspension and set the period of time for its duration, if it is to be continued. The owner or agent, after the expiration of the suspension period, may apply for housing license renewal for the regulated unit without the need to show cause why the owner or agent's privilege to apply for an housing license should be reinstated. Upon suspension, the owner or agent shall take immediate steps to evict the occupants of the regulated unit in question.
 - (4) Revocation: The immediate loss of the privilege to let the regulated unit for a period of time set by the Code Enforcement Officer or the Housing License Appeals Board and the loss of the privilege to apply for renewal of the housing license at the expiration of said time period. The Code Enforcement Officer may revoke only until the matter can be scheduled for the next possible Housing License Appeals Board meeting, at which meeting the Housing License Appeals Board shall consider the propriety of the revocation and set the period of time for its duration, if it is to be continued. Upon the loss of the privilege to let, the owner or agent shall take immediate steps to evict the occupants of the regulated unit in question.
- D. Grounds for imposing discipline.
- (1) Actions subject to discipline.
 - (a) Any of the following may subject an owner to discipline as provided for in § 135-10C:
 - [1] Failure to abate a violation of the Performance Codes and/or this chapter applicable to the premises within the time directed by the Code Enforcement Officer.
 - [2] Refusal to permit the inspection of the premises by the Code Enforcement Officer as required by this chapter.
 - [3] Failure to take such actions as may be required or necessary to cause any open **DCR** to be deemed a closed **DCR** by the Code Enforcement Officer by the end of the license year in which the **DCR** was issued, including, but not limited to, failure to respond to notice of a **DCR** or failure to perform an approved remedial plan in any material respect. Such failure occurring with respect to one or more open DCRs in each of two license years, when at least two of such open DCRs were issued within a period of 60 months, shall without more, constitute sufficient grounds for nonrenewal as of the commencement of a license year and/or for suspension or revocation. If a

DCR is received within the last 20 business days of the license year, the owner shall have 20 business days from the date of receipt of the notice of the issuance of DCR to cause the Open DCR to be deemed a closed DCR, regardless of the date of the end of the license year.

[4] Failure to remedy and prevent further violations of this chapter, other than with respect to disruptive conduct.

(b) For purposes of this subsection, there need be no criminal conviction before a violation can be found to exist.

(2) No discipline involving nonrenewal, suspension and/or revocation shall be permitted unless the discipline has been preceded by the issuance of a formal warning involving the same grounds for discipline at least 10 days prior to the taking of the new disciplinary action. A formal warning shall be issued when there exists one or more open DCRs in each of two license years and at least two of such open DCRs were issued within a period of 60 months.

E. Criteria for application of discipline.

(1) With respect to the issuance of a Level 2 DCR, the Code Enforcement Officer, when considering which of the discipline options to utilize as set forth in this section, and the Housing License Appeals Board, when deciding any discipline matter under this section, shall consider the following:

(a) The effect of the violation on the health, safety and welfare of the occupants of the regulated unit and other residents of the premises.

(b) The effect of the violation on the neighborhood.

(c) Whether the owner has a record of prior violations of this chapter and other ordinances of the Borough of Kutztown or has received notices of violations as provided for in this chapter, whether or not related to the regulated units in question. In this regard, no closed DCR (and any enforcement actions related thereto) shall be considered.

(d) Whether the owner has been subject to prior discipline under this chapter. In this regard, no closed DCR (and any enforcement actions related thereto) shall be considered. The prior issuance of a formal warning in connection with the open DCR shall be considered.

(e) The effect of disciplinary action on the occupants.

(f) The action taken by the owner or agent to remedy the violation and to prevent future violations, including any approved remedial plan submitted by the owner or agent in response to a Level 2 DCR with respect to any open DCR.

(g) The suitability of the policies and rental agreement or lease terms employed by the owner or agent to manage the regulated unit to enable the owner or agent to comply with the provisions of this chapter.

(h) When an open Level 2 DCR is under consideration, the nature of the associated criminal enforcement and/or other legal actions, the nature of the owner's violations of this chapter and the degree of the owner's unresponsiveness.

(2) In addition to applying discipline as set forth in this section relating to a Level 2 DCR, the Code Enforcement Officer may recommend and the Housing License Appeals Board may impose upon the existing license [or subsequent license(s) with respect to the Performance Codes] reasonable conditions related to the regulated unit in question for the purpose of fulfilling the goals of this chapter.

F. Procedure for formal warning, Nonrenewal, suspension or revocation of license.

(1) Following a determination that grounds exist for a formal warning or for nonrenewal, suspension or revocation of a housing license, the Code Enforcement Officer shall notify the owner or agent of the action to be taken and the reason therefor. Such notification shall be in writing, addressed to the owner or agent, and shall contain the following information:

(a) The address and identification of the particular regulated unit(s) affected.

(b) A description of the violation which has been found to exist.

(c) A statement that the owner or agent will receive a formal warning, or that the housing license for the affected regulated unit(s) will be subject to suspension or revocation or nonrenewal for the next license year beginning August 1. In the case of a suspension or revocation, the notice shall state the date upon which such suspension or revocation will commence, and in the case of a suspension the

notice shall also state the duration of the suspension.

- (d) A statement that, due to the nonrenewal, suspension or revocation (as the case may be) of the housing license, the owner or agent or any person acting on the owner's behalf is prohibited from letting or permitting occupancy of the affected regulated unit(s) from and during the period said disciplinary action is in effect.
- (e) A statement informing the owner or agent of the owner's right to appeal the decision to issue a formal warning or to subject the housing license in question to suspension, revocation or nonrenewal to the Housing License Appeals Board, as provided in this chapter.

(2) The procedures applicable to this § 135-10F shall be the same those of § 135-9A of this chapter, excepting § 135-9A(1) and (2).

G. In addition to any other remedy, discipline or enforcement action provided for in this chapter, the Borough of Kutztown may enforce this chapter by pursuing a civil action, including an action in equity or other equitable injunctive relief, including therewith:

- (1) The decision by the Borough of Kutztown to pursue any such action shall not be deemed an election of remedy so as to preclude other enforcement, disciplinary or other remedies available to the Borough of Kutztown for enforcement of this chapter; and
- (2) In the Borough of Kutztown's pursuit of any such action, a prima facie showing of a violation of any final, unappealable enforcement or disciplinary action or final, unappealable Housing License Appeals Board order shall be sufficient to satisfy any legal requirement that the Borough of Kutztown demonstrate irreparable harm as a prerequisite to obtaining injunctive relief.

H. Any discipline or enforcement action imposed under this chapter which is in any manner related to violations of the Performance Codes shall be applicable to the premises in question notwithstanding any change in the owner or its ownership of the premises. Any discipline or enforcement action imposed under this chapter with respect to any premises for reasons other than violation of any of the Performance Codes shall terminate, with respect to its applicability to such premises, upon any conveyance and/or change in owner or its ownership of the premises to a new owner, provided that:

- (1) The new owner, if an individual, shall not be related to the existing owner by blood, marriage, adoption or other decree of legal custody; and
- (2) The new owner, if a legal entity (other than an individual), shall not be owned, wholly or partially, by the existing owner.

§ 135-11. Severability.

It is the intention of Borough Council that each separate provision of this chapter shall be independent of all other provisions herein, and it is further the intention of Borough Council that if any of the provisions of this chapter be declared to be invalid, all of the other provisions hereof shall remain valid and in force.

§ 135-12. Repealer.

All ordinances or resolutions, or parts of ordinances or resolutions, insofar as they are inconsistent with this chapter, including but not limited to any portions of Chapter 135 of the Code of the Borough of Kutztown in effect on the date of enactment of this chapter, are hereby repealed.

BILL NO. _____-2008
AN ORDINANCE

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF READING BY ADDING TO CHAPTER 6 – CONDUCT AND CREATING A NEW PART 8 REQUIRING A PERMIT FOR PARTIES OR GATHERINGS WHERE ALCOHOLIC BEVERAGES WILL BE PRESENT, SERVED OR CONSUMED

WHEREAS, the City of Reading City Council is duly empowered to enact certain regulations relating to the public health, safety and welfare of the citizens of the City of Reading; and

WHEREAS, the City of Reading has determined that large gatherings combined with the consumption of alcoholic beverages on private property presents public health and safety risks;; and

WHEREAS, the City finds that including regulations for parties or gatherings where alcoholic beverages will be served or consumed is in the best interest of the residents and visitors of the City of Reading.

THEREFORE, THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Amending the Codified Ordinances of the City of Reading Chapter 6 by adding Part 8 requiring a permit for parties or gatherings where alcoholic beverages are present, consumed or be served, when 50 people or more are present, as attached in Exhibit A.

SECTION 2. This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or re-passage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

PART 8

**PERMITS FOR LARGE OUTDOOR SOCIAL GATHERINGS (50 PEOPLE OR MORE)
WHERE ALCOHOLIC BEVERAGES ARE PRESENT, SERVED OR CONSUMED.**

§6-801. Definitions.

BUILDING — anything constructed or erected, the use of which requires a permanent location on the land or that is attached to something having a permanent location on the land. Tents, covered patios, open porches and decks are not buildings under this Part.

OUTDOOR — the space on a premises not including any building on the premises.

PERSON — an individual, corporation, proprietorship, partnership, association or other entity.

PREMISES — a parcel of land or building upon which all or part of a regulated social gathering takes place.

REGULATED SOCIAL GATHERING — a congregation of persons for

social interaction where alcoholic beverages are present, served or consumed and which is attended at any one time by more than 50 persons, regardless of age. A gathering where the consumption of alcohol is prohibited and a gathering located at a shall not be considered a regulated social gathering under this Part.

§6-802. Permit Required.

1. Each person organizing, hosting or sponsoring a regulated social gathering shall file with the City of Reading Chief of Police an application for a permit for a regulated social gathering on an application form provided by the City of Reading.
2. A fee as set by this ordinance, approved by the City of Reading City Council shall accompany a permit application.
3. An application for a permit for a regulated social gathering shall be filed no less than 14 days prior to the date of the regulated social gathering. Failure to timely file the application shall be grounds in and of itself to deny the application for the permit.
4. The application for a permit for a regulated social gathering shall include the following:

LICENSES, PERMITS AND GENERAL BUSINESS REGULATIONS

- A. The names, local and permanent addresses, telephone numbers and ages of all individuals sponsoring, hosting or organizing the regulated social gathering. If a corporation is sponsoring, hosting or organizing the regulated social gathering, the officers and directors of the corporation shall be considered the individuals sponsoring, hosting or organizing the regulated social gathering, in addition to any other individuals sponsoring, hosting or organizing the regulated social gathering.
- B. The location of the regulated social gathering.
- C. The number of persons who will attend the regulated social gathering.
- D. The identity of the source of alcoholic beverages for the regulated social gathering.
- E. The time that the regulated social gathering will start and the time it will end.
- F. A description of the entertainment that will be present at the regulated social gathering.
- G. The method in which the number of persons attending the regulated social gathering will be regulated.
- H. Whether security will be provided and, if so, the manner in which security will be provided.
- I. The written authorization for a regulated social gathering from the owner of the premises for the date on which the regulated social gathering may be held.
- J. The square feet of open space on the premises where the regulated social gathering will take place.

- K. The manner in which the furnishing of alcoholic beverages or the consumption of alcoholic beverages by minors will be prevented.
- L. The manner in which the alcohol will be served.

- 5. A prior violation of this Part by the individuals or organization sponsoring, hosting or organizing the regulated social gathering will be in and of itself grounds for denying the application for permit.
- 6. A violation, at any time in the past, of the Pennsylvania Liquor Code by the serving of alcoholic beverages to a minor on the premises where a regulated social gathering was held shall, in and of itself, be ground for denying an application for permit under this Part.

§6-803. Special Requirements.

- 1. If activities of any social gathering in the three years prior to the application for a permit for a regulated social gathering required the presence of the Police Department of the City of Reading, the Chief of Police, taking into account all of the circumstances relating to the proposed regulated social gathering may, in his or her discretion, require the applicant to provide the following with a completed application:
 - A. A plan for private security which shall be approved by the City of Reading Police Chief.
 - B. A cash bond in an amount no less than \$500 set by the City of Reading Chief of Police to cover the projected costs to the City for Police and Codes Enforcement response to the premises where the regulated social gathering is to be held.
- 2. If at any social gathering in the three years prior to the application for a permit for a regulated social gathering a person was injured or became ill from consumption of alcoholic beverages, the applicant shall provide a certificate of insurance showing comprehensive liability insurance covering the persons at the regulated social gathering with a policy limit of no less than \$500,000.
- 3. Dispensing of alcoholic beverages.
 - A. Any person, host, sponsor, group, or organization who obtains a permit to host a regulated social gathering where alcohol is being served, provided, or consumed shall be prohibited from the possession of or the providing of alcoholic beverages in glass bottle containers on the premises.
 - B. Alcoholic beverages may only be served in and consumed from plastic or aluminum containers and shall only be dispensed by a keg or beer ball.
 - C. A violation of this paragraph shall authorize the revocation of a regulated social gathering permit and the dispersal of persons on the premises, in addition to the imposition of fines and costs as provided below.

§6-804. Appeals.

The denial of a permit by the Chief of Police may be appealed to the City of Reading City Council pursuant to the provisions of the Local Agency Act.

§6-805. Violations.

- 1. It shall be unlawful for any person to sponsor, host, organize, attend or participate

in a regulated social gathering in the absence of a permit issued by the City of Reading Chief of Police.

2. It shall be unlawful for the owner of the premises or those occupying or in control of the premises to permit a regulated social gathering to take place on the premises in the absence of a permit issued by the City of Reading Chief of Police.

3. It shall be a violation of this Part for any property owner or person in control of the premises to permit a regulated social gathering to take place or continue on the premises that violates any special conditions imposed upon the regulated social gathering by the permit.

4. Furnishing false information on the application for a permit for a regulated social gathering shall be a violation of this Part.

5. A person who sponsors, hosts or organizes a regulated social gathering who is not identified as a sponsor, host or organizer on the application for permit shall be in violation of this Part.

6. It shall be unlawful for the owner of premises to knowingly permit a social gathering to take place on the premises in violation of this Part.

7. The failure to implement the representations set forth in the application for a permit with regard to the maximum number of persons attending the regulated social gathering, the serving or consumption of alcoholic beverages by minors, continuing the regulated social gathering after the time limit set forth in the application or the failure to comply with any conditions in the permit will be a violation of this Part.

§6-806. Enforcement.

1. Any person violating this Part shall, upon conviction in a summary proceeding, be sentenced to pay a fine not to exceed \$600 to the use of the City of Reading, along with costs of prosecution, or to be imprisoned for not more than 10 days or both.

2. The City of Reading Police Department shall have the authority to disperse persons, upon notice, who attend a regulated social gathering for which no permit has been obtained. Failure to disperse shall be a violation of this Part.

3. Nothing in the Part shall limit the City of Reading from filing an action in equity to enjoin a regulated social gathering held in violation of this Part nor limit the Police Department from making arrests for violation of the laws of the Commonwealth of Pennsylvania and the ordinances of the City of Reading.

§6-807. Exemptions.

This Part shall not apply to any stadium, facility, arena, convention center, civic center, theater or other similar facility owned in whole or in part by the City of Reading or any authority to which the City of Reading has any power to appoint representatives or board members.